

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,	:	Case No. 1-02-CR-126
	:	
Plaintiff,	:	Judge Weber
	:	
v.	:	
	:	
THOMAS D. PHELPS,	:	<u>MOTION TO CLARIFY TERMS</u>
	:	<u>OF SUPERVISED RELEASE</u>
	:	
Defendant.	:	

Defendant Thomas D. Phelps, by and through counsel, respectfully seeks the direction of the court as to an issue that has arisen concerning the conditions of his supervised release. Specifically, Defendant Phelps has been advised by his probation officer, Michelle Merrett, that he may be in violation of the terms of his supervised release by remaining employed at the Hard-Ta-Knock clothing store in the Clifton area of Cincinnati and therefore, requests clarification from the court.

As background, Defendant Phelps was originally convicted of Possession of a Firearm by a Convicted Felon and sentenced to a period of 36 months of supervised release. Phelps' term of supervised release commenced on February 14, 2005. A Petition for Warrant for Offender Under Supervision was issued on December 1, 2006 seeking revocation based upon positive urine tests for the presence of marijuana, a new conviction for possession of marijuana and drug paraphernalia and

failure to report contact with law enforcement.

On February 28, 2007, the Supervised Release Violation hearing occurred before this court and Defendant Phelps was sentenced to one day in prison, to be followed by 18 months of supervised release. As a condition of his supervised release, Phelps was to serve four months in a residential re-entry center and 4 months of home incarceration.

On March 20, 2007, Phelps began serving his four month period of residential re-entry at the Talbert House for Men in Cincinnati. As a condition of his residency at the Talbert House, Phelps was required to maintain full time employment. While a resident at the Talbert House, Phelps has been employed for 40 hours per week at the Hard-Ta-Knock clothing store at the corner of McMillan and Clifton Avenues in Cincinnati. Employees at the Talbert House have confirmed Phelps' employment at Hard-Ta-Knock, and have confirmed his presence at work and approve of his employment at that business.

United States Probation Officer Michelle Merrett has advised counsel that she is unhappy with Phelps' employment at Hard-Ta-Knock. Specifically, Merrett has represented to counsel that she has for several months requested that Phelps obtain employment at a business wherein he can receive more pay, benefits, and more regular employment. Merrett has also represented to counsel that she is concerned

about Phelps' contact with individuals involved with this establishment because those individuals may have contact with illegal drug trafficking.

Defendant Phelps respectfully requests that this court determine if Defendant Phelps may remain employed at Hard-Ta-Knock during his residency at Talbert House and during his term of supervision. Phelps represents to the court that it has placed him in a difficult situation to be working in a business which is acceptable to the halfway house but appears to be unacceptable to the United States Probation Department. Further, Phelps is concerned that if he is forced to terminate his employment at Hard-Ta-Knock, and he is unable to obtain new employment in 14 days, he could be discharged from the Talbert House and violate the terms of his supervision.

Based upon the foregoing, counsel for Defendant Phelps respectfully requests that this court decide this issue and give direction to Defendant Phelps concerning whether he may remain employed at Hard-Ta-Knock clothing..

Respectfully submitted,

STEVEN S. NOLDER,
FEDERAL PUBLIC DEFENDER

s/W. Kelly Johnson

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Thomas D. Phelps

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon Anthony Springer, Assistant United States Attorney, by electronic filing, on May 22, 2007.

s/W. Kelly Johnson

W. Kelly Johnson